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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO
ANY FORM OF DETENTION OR IMPRISONMENT, TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Note by the Secretary-General

Feasibility of drafting model texts for national
legislation or other measures for the effective
implementation of standards relating to human
rights in the administration of justice

Introduction

1. The Commission on Human Rights at its forty-fifth session adopted resolution 1989/24 entitled "Human rights in the administration of justice". In that resolution, the Commission made reference to a number of the international standards adopted by the United Nations in the field of human rights in the administration of justice including the relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination.
2. The Commission also referred to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the safeguards guaranteeing protection of the rights of those facing the death penalty, the Basic Principles on the Independence of the Judiciary, the Code of Conduct for Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

3. The Commission, in that resolution, reaffirmed the importance of the full and effective implementation of United Nations standards on human rights in the administration of justice and called upon all States to spare no effort in providing for effective legislative and other mechanisms and procedures as well as adequate resources to ensure more effective implementation of these standards.

4. The Commission stressed, in that resolution, the desirability of providing States, at their request, with continued assistance in the field of the administration of justice, in particular under the programme of advisory services in the field of human rights, and the desirability of including in such assistance model texts for national legislative or other measures for the effective implementation of standards in that field, and requested the Secretary-General to study the feasibility of drafting such model text, to seek the views of Member States on this issue and to inform the Commission at its forty-sixth session of the results of his study.

5. The present document is submitted to the Commission pursuant to that request.

6. By a note verbale dated 7 June 1989, the Secretary-General requested the views of Member States on the drafting of model texts as set forth in Commission resolution 1989/24. As of 31 January 1989, responses containing views on the issue of model legislation have been received from Burundi, Cuba, Finland, Pakistan, Poland and Yugoslavia. Bangladesh, Belgium and the Dominican Republic provided information on national norms regulating human rights and administration of justice.

INFORMATION PROVIDED BY STATES

BANGLADESH

The Government of Bangladesh provided information on the protection of human rights in the Constitution of Bangladesh and in the legal system of the country stating that they contained adequate provisions for the protection of human rights in the administration of justice.

BELGIUM

The Government of Belgium referred to previous responses to questionnaires on the subject of human rights and the administration of justice and to the Belgian laws, decrees and rules referred to therein.

BURUNDI

The Government of Burundi stated that it was in favour of a continuing assistance in the field of the administration of justice especially through the advisory services programme. The Government said that it also appreciated the opportunity of having model texts for national legislation or other measures for the effective implementation of standards in the field. It was the opinion of the Government of Burundi that model texts could generate concerted and uniform rules and regulations concerning human rights and the administration of justice.

The Government of Burundi, in an explanatory memorandum, further stated:

"The Minister for Foreign Affairs and Co-operation, considering that this offer of assistance will enable the country's officials to acquire greater knowledge and expertise in human rights questions, is of the opinion that this offer should be accepted and the new field of co-operation tried out. He is nevertheless asking the Minister of Justice for his comments.

The Commission on Human Rights wants to provide member States with assistance designed to help them give their personnel specialized training in the field of human rights and enable Governments to bring their legislation into line with international standards in this area.

This offer, which has nothing but advantages, is one that our country cannot refuse. Just as Burundi regularly devotes substantial efforts to training its people in other disciplines, it should take this opportunity to give some of them specialized training in this field too, since nowadays human rights have been raised to the same level as other branches of law.

In addition, the Commission on Human Rights does put pressure, and sometimes strong pressure, on States, which easily conclude, for lack of adequate information, that it is interfering in their internal affairs, which leads to friction between the States and the Commission.

We think all these problems could be avoided, or at least mitigated if in every State - and our own should be no exception - there were persons with recognized competence in the field of human rights. For that reason, the assistance offered by the Commission on Human Rights should be accepted."

CUBA

The Government of Cuba reviewed the incorporation into the Constitution and laws of Cuba of the various United Nations standards in the field of human rights in the administration of justice referred to in Commission resolution 1989/24. With regard to the advisory service programme, the Government stated the following:

"The Republic of Cuba considers it desirable to suggest that under the programmes for advising States on the administration of justice, emphasis should be placed on the importance of making the provisions of States' national legislation compatible with the principles recognized in international human rights instruments, that their legislation should categorize the acts condemned by the international community as offences and that States should respond to the efforts made by the United Nations to ensure that national legislative measures are directed towards strengthening the machinery guaranteeing impartiality in the administration of justice with a view to securing respect for human rights and fundamental freedoms and physical and moral integrity of the individual."

DOMINICAN REPUBLIC

The Dominican Republic stated that it followed and observed the principles in articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights, and as a party to the International Covenant on Civil and Political Rights, fulfilled the requirements of article 6 of that Covenant in that no one should be deprived of his life, either arbitrarily or by trial, since the death penalty did not exist in the national legislation.

FINLAND

The Government of Finland stated that the resolution of the Commission was related to General Assembly resolution 41/120 on standard setting in the field of human rights. The Government stated that the basic idea behind both these resolutions is partly the same: international community of States should have a consistent and precise body of international human rights law in order to implement it fully and effectively. Unfortunately, this is not always the case. For instance, some of those declarations and resolutions of the United Nations General Assembly or other international bodies that have dealt with the same questions already settled in international human rights conventions have used language either inconsistent with or clearly below the standard included in a convention in question.

For these and similar reasons, the Government of Finland stated that work for the conceptual accuracy of this law should be done continuously, as requested in paragraph 1 (a) of article 13 of the United Nations Charter. This conclusion is valid not only when outlining new standards of international human rights, but also when developing or reinforcing the existing international legal network. As a result of successful work of this kind, human rights law will be interpreted and implemented more uniformly. The Government of Finland supported the efforts of working for a more precise body of international human rights law. There is a true need for conceptual and other consistency in this area.

Regarding the issue of model texts the Government stated that the idea of drafting model texts in the United Nations for national legislative or other measures in the above-mentioned field is welcomed. These models may be specially useful for States and Governments not having a very long history in legislative process in general or resources for extensive work of this kind. But it also has, especially through its general clarifying impact for instance as regards earlier conflicting interpretations, its benefits for those countries, who like Finland, have adhered practically to all of the most important human rights conventions and have also supported many valuable declarations and resolutions adopted in the United Nations in this field.

PAKISTAN

The Government of Pakistan stated that the Constitution of the Islamic Republic of Pakistan provided constitutional guarantees to every citizen of the country. Regarding model texts, the Government suggested that the model text for the effective implementation of standards in the field of human rights should encompass all the Fundamental Rights in words of unmistakable import specifying the role of judiciary to give effect to those standards.

POLAND

The Government of Poland stated that the provisions of the Polish judiciary law (civil, penal, administrative and fiscal law and procedural regulations) were in principle in conformity with the provisions of International Covenants on Human Rights and with other international instruments referred to in resolution 1989/24 of the Commission on Human Rights. Nevertheless, appropriate work on the reform of penal law is being carried out with an aim to bring the provisions of this law still closer to international standards on human rights (e.g. recent amendments of provisions on detention) as well as to the specific social and political conditions of Poland.

Furthermore, the Government of Poland stated that the idea of drafting, within the framework of the United Nations, of model legal texts appeared to be valid. It was the Government's opinion that such texts should take into account specific political, economic and social conditions of particular States or groups of States and the traditions of their legal systems. Model legal texts could be prepared with the framework of an appropriate United Nations organ, established with this purpose, which would take into consideration experiences of States from different geographical, political and economic regions.

YUGOSLAVIA

The Government of Yugoslavia stated that it was agreeable to the recommendation of the United Nations Commission on Human Rights concerning the desirability of providing, under advisory services programmes in the field of human rights, assistance through model texts for national legislative or other measures, provided these models are not binding on the Member States of the United Nations.

Conclusions

7. It would appear from the replies received that the preparation of model texts for national legislation and other measures for the effective implementation of international standards in the field of human rights in the administration of justice could play a positive role in strengthening the protection of human rights on the national level as part of an overall programme of advisory services in the field of human rights. Such a programme could also include the provision of expert services and the training of national officials in subjects relating to human rights in the administration of justice.

8. In approaching the preparation of model texts, consideration would have to be given to the various legal systems in the world and to the approaches of different societies to the protection of human rights in the administration of justice while at the same time ensuring respect for the specific provisions of international standards. The texts would be available for adoption by States as they saw fit and would in no way be obligatory. The model texts would be drafted so as to allow States a wide choice of approaches in order to enable the objective of respect for human rights in the administration of justice to be achieved in accordance with the requirements of each situation.

9. The first step in preparing model texts would be to analyse the different national laws and machinery protecting human rights in the administration of justice. A significant amount of material for analysis already exists within the United Nations as a result of information submitted by States Parties pursuant to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and similar instruments, or collected pursuant to requests for information by the Commission on Human Rights or the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Similarly, information collected within the United Nations Programme on Crime Prevention and Treatment of Offenders could be analysed. Further, the many reports drafted over the years by the Secretariat or Special Rapporteurs on themes relating to the human rights in the administration of justice could provide valuable suggestions for the effective protection of human rights views. Finally, expert bodies such as the Human Rights Committee and the Sub-Commission on Prevention of Discrimination and Protection of Minorities could be consulted on the matter and their views sought on draft texts prepared by the Secretariat.

10. While the task of drafting such model texts might be a complex one, the results could well justify the effort by placing at the disposal of national authorities precise tools which would enhance the effective protection of human rights in the administration of justice.
